UNITED STATES OF AMERICA.

Supreme Court of the United States

No. 4, October Term, 1902.

FRED A. BAKER, *Plaintiff in Error,* vs. STEPHEN BALDWIN, *Defendant in Error.*	*Error to the Supreme Court of Michigan.*

PETITION FOR RE-HEARING.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Fred A. Baker, the above named plaintiff in error, files and presents this his petition for a rehearing in the above entitled cause, and briefly and distinctly states the grounds on which he relies as follows:

1. The Supreme Court of the United States has jurisdiction to review and reverse the judgment of the Supreme Court of the State of Michigan in this cause under the third clause of Section 709 of the Revised Statutes of the United States.

2. The court erred in dismissing the writ of error in this cause for want of jurisdiction for the reason that it overlooked the fact that the writ of error was sued out, and the jurisdiction of the court invoked, under that clause of said Section 709, which reads:

"Or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority."

3. The court inadvertently overlooked the case of Trebilcock vs. Wilson, 12 Wall., 687.

Wherefore your petitioner prays that the order of the court dismissing the writ of error in this cause for want of jurisdiction may be vacated and a re-hearing had at this or the next term of the court.

ALBERT B. HALL,
Attorney for Plaintiff in Error.

CERTIFICATE OF COUNSEL.

We, the undersigned, counsel for the plaintiff-in-error, do hereby certify that in our judgment the above and foregoing petition for a re-hearing is well founded.

Detroit, Mich., Jan. 12, 1903.

ALBERT B. HALL.
FRED A. BAKER.

BRIEF IN SUPPORT OF PETITION.

The case of *Trebilcock vs. Wilson*, 12 *Wall.*, 687, is identical in every respect with the case at bar, and the opinion of the court as delivered by Mr. Justice Field is so conclusive and decisive that we will here submit it as our argument in support of this petition.

Mr. Justice Field delivered the opinion of the court:

"In June, 1861, Benjamin Wilson, one of the plaintiffs in the court below, gave to the defendant his promissory note for $900, due one year after date, with ten per cent interest, payable in specie; and at the same time, to secure its payment, executed, in connection with his wife and delivered to the defendant, a mortgage upon certain real property in the State of Iowa. This mortgage was duly recorded in the office of the recorder of the county where the land was situated.

"In February, 1863, Wilson offered to pay the defendant the amount due on the note, principal and interest, and for that purpose tendered to him such amount in United States notes, declared by the Act of Congress of February 25, 1862 (12 Stat. at L., 345), to be a legal tender for all debts, public and private, with certain exceptions, but the defendant refused to receive them, claiming that the note was payable in gold or silver coin of the United States.

"In July, 1865, the plaintiffs, who were then residents of Iowa, presented to one of the district courts of that State their petition, setting forth the alleged tender, and praying that the defendant might be required by its decree to release and discharge the mortgage upon the proper book of record, as required by law upon the payment of a mortgage debt, averring that they had kept the money tendered and ready to pay the defendant, and that they had brought the money into court for that purpose.

"The defendant demurred to the petition on several grounds, but the only one presented for our consideration is, that the tender was not a good and sufficient tender, because not made in gold and silver coin, in which alone the note was payable.

"The court overruled the demurrer, and in September, 1866, gave its decree for the plaintiff, that the mortgage be cancelled, and that the defendant enter satisfaction of it upon the record, holding that the tender was legal and sufficient.

"On appeal to the Supreme Court of the State, this decree was in October, 1867, affirmed, and the defendant brings the case here on writ of error.

"The principal question presented for our consideration is whether a promissory note of an individual, payable by its terms in specie, can be satisfied, against the will of the holder, by the tender of notes of the United States declared by the Act of Congress of February 25, 1862, to be legal tender in payment of debts.

"There is, however, a preliminary question of jurisdiction raised, which must be first disposed of. The State Court, in holding the tender legal and sufficient, sustained the validity and constitutionality of the Act of Congress declaring the notes a legal tender. Its decision was, therefore, in favor of, and not against, the right claimed by the plaintiffs under the Act of Congress, and hence it is contended that the appellate jurisdiction of this court does not arise under the 25th section of the Judiciary Act of 1789. Some support is given to this view by the decision of this court in *Roosevelt vs. Meyer*, 1 *Wall.*, 512 (68 U. S. XVII., 500), where it was held that, as the validity of the Legal Tender Act was drawn in question in that case, and the decision of the State Court was in favor of it, and of the right set up by the defendant, this court had no jurisdiction to review the judgment, and a dismissal of the case was accordingly ordered. *The court in that case confined its attention to the first clause of the 25th Section of the Judiciary Act and, in its decision, appears to have overlooked the third clause.* That section provides for the review of the final judgments and decrees of the highest court of a State in which decisions could be had in three classes of cases:

"First. Where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity;

"Second. Where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity; and,

"Third. Where is drawn in question the construction of any clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party under such clause of the Constitution, treaty, statute or commission.

"Under this last clause the appellate jurisdiction of this

court in the case of *Roosevelt vs. Meyer* might have been sustained. The plaintiff-in-error in that case claimed the right to have the bond of the defendant paid in gold or silver coin under the Constitution, upon a proper construction of that clause which authorizes Congress to coin money and regulate the value thereof and of foreign coin; and of those articles of the amendments which protect a person from deprivation of his property without due process of law and declare that the enumeration of certain rights in the Constitution shall not be construed as a denial or disparagement of others retained by the people; and reserve to the States or the people the powers not delegated to the United States or prohibited to the States.

"The decision of the court below being against the right of the plaintiff in error claimed under the clauses of the Constitution, the construction of which was thus drawn in question, he was entitled to have the decision brought before this court for re-examination.

"In the present case, as the defendant claimed a similar right, upon a construction of the same and other clauses of the Constitution, and a like adverse decision of the court below was made, he is equally entitled to ask for a re-examination of the decision.

"But the defendant also claimed a right to demand coin in payment of the note of the plaintiff by the acts of Congress regulating the gold and silver coins of the United States, and making them a legal tender in payment of all sums according to their nominal or declared values, contending that the Act of 1862, making notes of the United States a legal tender for debts, did not apply to the contract in suit. He thus claimed in fact, although he did not state his position in this form, that, upon a proper construction of the several acts together, he was entitled to payment in coin. This right having been denied by an adverse decision, he was clearly in a condition to invoke the appellate jurisdiction of this court for a review of the decision.

"Nor is the appellate jurisdiction of this court, in this case, affected by the change in the language of the third clause of the 25th Section of the Judiciary Act of 1789, by the second section of the amendatory Judiciary Act of February 5th, 1867. By this clause in the latter act the judgment or decree of the highest court of a State can be reviewed 'where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty, or statute of, or commission held, or authority exercised under the United States, and the decision is against the title, right,

privilege or immunity specially set up or claimed by either party, under such Constitution, treaty, statute, commission or authority.' The section came incidentally before the court at the last term, in Stewart vs. Kahn (ante, 177), but it was not deemed necessary to determine whether it had superseded the 25th Section of the Judiciary Act of 1789.

"As there observed, it is to a great extent a transcript of that section; and several of the alterations of phraseology are not material. The principal addition is found in the second clause, and the principal omission is at the close of the section. But in this case, as in that, there is no occasion to express any opinion as to the effect of the new section upon the original. Under the new section, as under the old, if that be superseded, the plaintiff in error can seek a review of the decision made against the right claimed by him."

In the present case it is distinctly alleged in the bill that the tender was refused on the ground that the legal tender provisions of the Act of Congress of February 28, 1878, commonly known as the Bland-Allison Act, are unconstitutional and void. (Record, p. 2.)

The answer admits all the facts alleged in the bill, and affirmatively makes the claim that the act is not within the power of Congress to coin money and regulate the value thereof, and is a violation of the provision of the Constitution that no person shall be deprived of life, liberty or property without due process of law. (Record, p. 4 and p. 8.)

The only question presented by the pleadings, the only question decided by the trial court and the Supreme Court of Michigan, and the only question raised by the assignment of errors in this court, is whether the legal tender provisions of the Act of Congress of February 28, 1878, are in conflict with the Constitution of the United States; and we respectfully submit that unless the court intends to overrule Trebilcock vs. Wilson, 12 Wall., 687, a rehearing should be granted.

ALBERT B. HALL,
Attorney for Plaintiff in Error.

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